

Alfred L. Harris  
August 6, 2004  
Page 3

If you need any additional information please let me know.

Sincerely,

*Nick Boulter* / pgt

Nicholas Boulter  
Deputy General Counsel

NB\pgt  
Attachment

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EE0C0000000075

## TERMINATIONS

Month: December, 2004

[illegible]

## 2004 TERMS

Name	Gender	Race	Age	Performance Rating	Years of Service	Comments	Vacation Entitlement	Severance	Paid Cobra	Term Eff. Date
Carl R. Nuckowski	M	6	33	B	2	Resigned				1/16/2004
Virgil Rayneri	M	6	39	n/a	11 mos	Resigned		n/a		1/27/2004
Brent E. Harris	M	W	63	B	12	R.O.F.		4 weeks	N/A	2/27/2004
Stephanie Medley	F	W	17	(student co-ed)	8 mos.	Terminated	n/a	n/a	n/a	2/27/2004
Robert Pinson	M	6	60		82 mos.	Transfer to B'ham	-	-		4/17/2004
Michael F. DiMarco	M	W	54	B-	9	Out of work	Thurs., May 13	\$86,737.55	4 wks	3 months
Michael Ellwein	M	W	18	Student	n/a	Poor Performance	Thurs., May 27	n/a	n/a	n/a
Jeffrey Harder	M	W	47	A-	8	Out of work	Friday, May 21	\$51,542.40	4 wks	3 mos.
Laurence W. Palmer	M	W	56	C-	8	Resignation	Friday, May 14	\$62,375.00	n/a	n/a
Richard C. Robbins	M	W	64	B	8	Running out of work	Fri., May 21	\$95,081.50	4 wks	3 months
Prabhakar Sharma	M	A	52	B	4	on GO for 6 mos.	Mon., May 17	\$111,492.30	2 wks	2 months
Terry Taylor	M	W	66	B+	3	Hired for large jobs PM. Has run EPC office. Only partially billable and only on small jobs	Thurs., May 27	\$126,104.00	2 wks	2 months
Thomas J. Zadnik	M	W	64	C	9	Out of Work	Thurs., May 13 or Friday, May 14	\$86,216.00	4 wks	3 months
Charlie Myers	M	W	61	B-	6	Out of work	Monday, May 31	\$72,673.69	4 wks/\$5,590	3 months
Al Corliss	M	W	61	B-	12	Out of work	Friday, May 28	\$72,696.00	4 wks/\$5,592	3 months
Swami Kalyanam	M	A	67	B-	8	Out of work	Friday, May 28	\$95,619.36	4 wks/\$7,355.30	3 months
Cortrell, Brenda	F	W	57	B-	9	move to A/S	6/4/2004	\$59,400.00	n/a	n/a
Ivy, James H.	M	W		B+	3	move to A/S	6/4/2004	\$55,893.84	n/a	n/a

United States Equal Employment Opportunity Commission  
Philadelphia District Office  
21 S. 5<sup>th</sup> Street, Suite 400  
Philadelphia, PA 19106

Woody Anglade  
Counsel for Plaintiff

2005 SEP 23 AM 11:21

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

BE&K ENGINEERING COMPANY  
(SUBSIDIARY OF BE & K, INC.),

Defendants.

CIVIL ACTION NO.

05 697

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age, and to provide appropriate relief to Juan Perez who was adversely affected by such practices. As alleged with greater particularity in Paragraph 7 below, the Commission alleges that Defendant, BE & K Engineering Company (Subsidiary of BE & K, Inc.), discriminated against Mr. Perez, based on his age, then age fifty-four (54), when he was terminated from his Senior Process Engineer position, despite Defendant recently hiring a significantly younger and less qualified Engineer. As a result of the alleged discrimination, Mr. Perez suffered income and backpay losses.

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### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Delaware.

### PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, BE & K Engineering Company, (Subsidiary of BE & K, Inc.) (the "Employer" or "BE & K"), has continuously been doing business in the State of Delaware and the City of Newark, and has continuously had at least 20 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

### CONCILIATION

6. Prior to the institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

### STATEMENT OF CLAIMS

7. Since at least 2003, the Defendant Employer has engaged in unlawful employment practices by unlawfully subjecting Juan Perez to disparate treatment based upon his age, then age fifty-four (54), in violation of Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b). The unlawful employment practices include, but are not limited to, the following:

(a) In or about February 1993, Mr. Perez began working for Defendant as a Lead Engineer. At that time, he had earned his Bachelor's Degree in Engineering in 1975 and had extensive years of experience as an Engineer. Later that year, he began working for a Refining Company as a Senior Process Engineer. In 1997, he went to work for another Refining Company as a Senior Process Engineer.

(b) In or about 1999, Mr. Perez returned to Defendant, BE & K, and began working as a Senior Process Engineer.

(c) At all relevant times during his employment with Defendant, Mr. Perez received good performance evaluations and never received any disciplinary actions.

(d) In January 2003, Mr. Perez was informed by his Manager that the work load was slow, and the work outlook "looked pessimistic." However, Juan Perez continued to work as

requested.

(e) In July 2003, Mr. Perez noticed that Defendant hired a less qualified and significantly younger recent college graduate, age twenty-two (22), to a less Senior Engineer 2 position. Defendant told the young college graduate upon his hire, that BE & K was looking to hire younger Engineers.

(f) On or about November 21, 2003, Mr. Perez was laid off. He was fifty-four (54) years old at the time. Defendant subsequently discharged four (4) other Engineers, all ranging in age from 41-64.

(g) Juan Perez immediately questioned his termination and the hiring of the younger and less qualified college graduate with his Manager, given that Mr. Perez was told that the workload was slow and he could have been retained. The Manager responded that Defendant "needed to start hiring younger people to rejuvenate the workforce."

(h) At the time of Mr. Perez's termination, he had almost thirty (30) years of experience as an Engineer and was widely respected by his colleagues for his work.

(8) The effect of the practices complained of in paragraph 7(a)-(h) above have been to deprive Juan Perez of equal employment opportunities and otherwise adversely affect his status as an employee, because of his age.

(9) The unlawful employment practices complained of in paragraphs 7(a)-(h) above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

#### PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors,



assigns and all persons in active concert or participation with it, from engaging in discrimination based on age, and any other employment practices which discriminate based on age and because of protected activity.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make Juan Perez whole by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to rightful place reinstatement of Juan Perez, or frontpay, in lieu thereof, if reinstatement is not feasible.

D. Order Defendant Employer to pay Juan Perez liquidated damages for its willful conduct described in paragraph 7(a)-(h) above, in amounts to be determined at trial.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award the Commission its costs of this action.



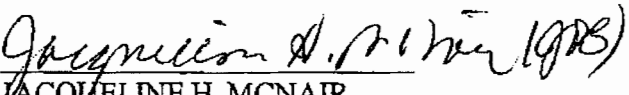
JURY TRIAL DEMAND

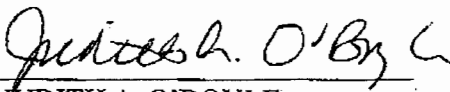
The Commission requests a jury trial on all questions of fact raised by its complaint.

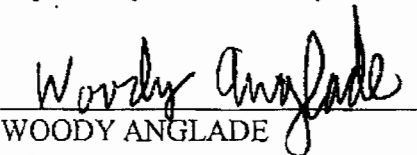
Respectfully submitted,

JAMES E. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

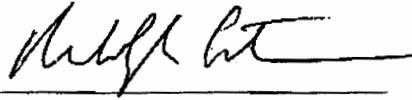
  
JACQUELINE H. MCNAIR  
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1 A. Jeff is, if I recall, he is 31.

2 Q. And Christopher?

3 A. 19.

4 Q. Is Jeff from your first marriage?

5 A. That's correct.

6 Q. And Chris is from your current wife?

7 A. Second.

8 Q. And does Christopher live with you?

9 A. Yes.

10 Q. Have you ever been a party to any other lawsuits?

11 A. No, I haven't.

12 Q. Have you ever filed any charge or complaint with  
13 any governmental agency regarding your employment with  
14 your employers other than BE&K?

15 A. No, no.

16 Q. Have you ever been sued?

17 A. No.

18 Q. And have you ever been discriminated against by  
19 anyone other than BE&K, including landlord, other private  
20 club, any other employers?

21 A. Not officially.

22 Q. What do you mean, not officially?

23 A. Well, everybody discriminates, you know, in terms  
24 of friends or -- well, not friends, people like you know,



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1 especially when you have an accent.

2 Q. Okay. Do you feel you have experienced some  
3 discrimination based on nationality, perhaps?

4 A. To a point.

5 Q. What about age outside of the context of BE&K?

6 A. No.

7 Q. Your age?

8 A. 57.

9 Q. And your date of birth?

10 A. February 27, 1949.

11 Q. We are going to jump to education now. Starting  
12 way back in high school. What high school did you  
13 attend?

14 A. I was in Puerto Rico. The name of the school is  
15 Juan, like my first name, Jose Osuna, O-S-U-N-A.

16 Q. J. J. Osuna, is that what it is called?

17 A. Yes.

18 Q. What year did you graduate?

19 A. '67. A long time ago.

20 Q. Not that long. And did you go to college after  
21 that?

22 A. Yes.

23 Q. Did you go straight from high school into  
24 college?



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1 A. Yes.

2 Q. What college or colleges did you attend?

3 A. Stevens.

4 Q. Stevens?

5 A. Institute of technology in Hoboken, New Jersey.

6 Q. What year did you graduate?

7 A. '75.

8 Q. Did you graduate with a degree?

9 A. Yes, ma'am.

10 Q. What was that degree?

11 A. Chemical engineer. Degree in engineering,  
12 chemical engineering.

13 Q. Is that a Bachelors of Science?

14 A. It is a Bachelor in Engineering, which is kind of  
15 different from other school. It is Bachelor in Science  
16 of Engineering.

17 Q. Okay. And you said chemical engineering?

18 A. Yes.

19 Q. I'm sorry. Post-graduate, did you have any  
20 additional college or post-college experience?

21 A. My first job was in Corpus Christi, Texas, that I  
22 got from Stevens.

23 Q. So you went from Stevens to your first full-time  
24 employment?

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1 because Bechtel had kind of a small office in Pottstown,  
2 Pennsylvania, and some of the people will kind of commute  
3 from there.

4 Q. But you worked right at the Chevron?

5 A. Correct.

6 Q. And that was in south Philly, you said?

7 A. Yes.

8 Q. Now, where were you living at this time?

9 A. In Delaware. I was commuting.

10 Q. And this was at the Greenbank address?

11 A. No. Prior, because that was prior to moving to  
12 New Jersey. I lived in Newark, Delaware.

13 Q. You drove to Philly to go to Chevron?

14 A. Correct.

15 Q. How many days a week?

16 A. Five days.

17 Q. What was your job title at Bechtel?

18 A. It was a lead engineer.

19 Q. Oh, lead engineer, okay. I thought you said  
20 elite. That was pretty fancy.

21 A. No, no.

22 Q. Now, I'm going to ask you a lot of questions  
23 today that are terminology based just so I can get an  
24 understanding of hearing things. So forgive me if they



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1 are to you very dumb questions. But for a lead engineer,  
2 is that all still in the process group?

3 A. It is in the process group, and basically, I'm  
4 kind of overlooking, it was about three engineers.

5 Q. Okay. So lead indicates that you have some  
6 engineers under you that you supervise?

7 A. Correct, and leading the group.

8 Q. Making sort of project decisions?

9 A. Correct, and guidance to younger engineers.

10 Q. Is a lead engineer above a technical service  
11 engineer, or same? Or just a different --

12 A. Well, tech service is out of the engineering type  
13 of -- engineering is pretty much design. Tech service is  
14 pretty much kind of in the operating field.

15 Q. So is technical service really, it is more fixing  
16 problems?

17 A. Yes.

18 Q. Would that be fair?

19 A. Yes.

20 Q. Okay. Whereas lead engineer is --

21 A. More design type of work.

22 Q. Now, when you were a technical service engineer  
23 at Star, switching over to lead engineer, did you need  
24 any sort of skills to make that, additional skills to



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1           A.   Basically, what I have explained before, that the  
2 rumors were that Sun Oil was going to acquire the Chevron  
3 refinery and most likely we were not going to be needed.  
4 And instead for me waiting for that moment, I decided to  
5 go ahead and look for a job some place else.

6           Q.   And your concerns did, in fact, come true?

7           A.   Yes.

8           Q.   I'm done with this one for now.

9                     You know what, actually I'm going to go back  
10 to this just for one second. That letter doesn't  
11 indicate in your type, in your typewritten document, what  
12 the date of the letter was. But there seems to be a  
13 stamp by someone on the top right-hand indicating  
14 February 1, and that looks like 1993 to me.

15          A.   That's correct.

16          Q.   Do you think that's the approximate date?

17          A.   That's right.

18          Q.   Now, the letter said you had met with him, Mr.  
19 Fraser, on August 6, 1992. So between August 6 and  
20 February 1, 1993 did you have any other communications  
21 with BE&K?

22          A.   I had communication with a fellow called John  
23 Trexler.

24          Q.   John Trexler?



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1 BE&K?

2 A. No, I haven't.

3 Q. And you said you filled out a job application at  
4 BE&K?

5 A. That's correct.

6 Q. I'll move that in.

7 (Perez Deposition Exhibit 2 was marked for  
8 identification.)

9 Q. Okay. So is this the application that you  
10 completed for BE&K?

11 A. Let me see the year here. That's correct.

12 Q. On the last page of this, which is EEOC 146, that  
13 Bates stamp is kind of covering the date, but can you  
14 make out the date underneath that?

15 A. It looks like February maybe 26, '93.

16 Q. It looks like February 26'ish, 1993?

17 A. Well, yes. Because my birthday was the 27th, and  
18 I kind of remember.

19 Q. Remember.

20 A. I know that it was either 27 -- I mean 26,  
21 because my birthday was the 27th.

22 Q. So when did you complete the application in  
23 comparison to getting the offer?

24 A. That's kind of hard to tell.

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1 Q. Engineers?

2 A. Right. I mean they have rate, an hourly rate,  
3 but it is basically on salary basis.

4 Q. Okay. What was the job title at BE&K when you  
5 started?

6 A. I would say process engineering. That's pretty  
7 much.

8 Q. Process engineering?

9 A. Yes.

10 Q. Now, is there a difference between process  
11 engineer and senior process engineer?

12 A. Well, the amount of time that you have in that  
13 professional area.

14 Q. Experience, basically?

15 A. Experience.

16 Q. So when you started you were originally a process  
17 engineer?

18 A. As I recall, yes.

19 Q. Now, what are the necessary qualifications for a  
20 process engineer?

21 A. Well, it is a branch of chemical engineering that  
22 deals with chemical processes. That's a quick definition  
23 that I could give you.

24 Q. And not to make it too dumbed down, but chemical



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1 process engineer, sort of who is above that person, who  
2 is below that person? If you are coming up in the ranks  
3 what steps do you take?

4 A. Well, in my case the first time that I went to  
5 work for BE&K was Mr. Fraser was the manager.

6 Q. A process manager?

7 A. Yes. The department manager.

8 Q. Right, okay. And that's the highest in your  
9 group?

10 A. Yes.

11 Q. And then who would be below the manager?

12 A. Project, the project engineer.

13 Q. Project engineer. And were there more than one  
14 project engineers?

15 A. Well, there is pretty much one that is in charge  
16 of the entire project.

17 Q. So one per project; is that correct?

18 A. Yes. But I was working for a particular project.

19 Q. Okay. And then below the project engineer for  
20 that project was who?

21 A. Pretty much this discipline had, I wouldn't call  
22 it -- it is like a department. Like in the case of Mr.  
23 Pete Howe, he was a process manager, which is exactly the  
24 same, the position of Mr. Fraser had, and then there is a



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1           A.    I think it was seven months.  Again, it was  
2 before my wedding anniversary.  So they are kind of key,  
3 key dates.

4           Q.    How many projects did you work on during that  
5 period?

6           A.    I will say two.

7           Q.    Two projects.  Do you remember the length of  
8 time?

9           A.    Well, it has to be less than seven months.  The  
10 very first one I think they were wrapping up, so I will  
11 say maybe two months.

12          Q.    The project had already begun when you started?

13          A.    I'm sorry?

14          Q.    The project had already gotten started when you  
15 began your employment?

16          A.    Yes, yes.

17          Q.    The second project, how long?  That lasted for  
18 the duration?

19          A.    Yes.

20          Q.    Was there overlap between the first and the  
21 second?  Were you working on them at the same time?

22          A.    Not really.  As soon as your part, it is over,  
23 they can pull you in.

24          Q.    You were full-time, 40 hours, through the whole



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1 period?

2 A. Correct.

3 Q. How many other engineers were on project 1?

4 A. John Trexler was involved in that project and  
5 myself.

6 Q. Anyone else?

7 A. Not that I recall.

8 Q. How about project number 2, how many engineers o  
9 that?

10 A. Let me go back to the prior question. When you  
11 said how many engineers were involved, in terms of my  
12 discipline, process engineer?

13 Q. Yes. Thank you for clarifying. For the rest of  
14 the time I'm only going to be talking about Process  
15 Department. So if I vary from that I'll make sure I  
16 spell it out for you. Otherwise, I'm definitely talking  
17 about process.

18 A. Okay.

19 Q. Then your answer regarding you and John Trexler  
20 were the only process engineers on the first project,  
21 that is correct?

22 A. That is correct.

23 Q. And how about on the second project?

24 A. As I recall, we were two.



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1 Q. Was that you and John Trexler also?

2 A. No. This was a fellow that I don't recall his  
3 name. He is no longer with BE&K.

4 Q. Did he leave before your 1993 employment ended?

5 A. Yes.

6 Q. Was he an All States employee?

7 A. No. He was paid for by BE&K directly.

8 Q. Was he laid off?

9 A. Yes.

10 Q. Now, as between you and John Trexler, did you  
11 have different roles for project number 1?

12 A. Since John -- well, John was kind of more senior  
13 than I, so he had, maybe he was overlooking what I was  
14 involved with, and at the same time working together.

15 Q. Without violating your confidentiality agreement,  
16 who were the clients for projects 1 and 2?

17 A. DuPont was the second one. The very first one  
18 was a company in Mobile, Alabama, and I don't recall.

19 Q. Mobile, Alabama, though, was where their  
20 headquarters or corporate --

21 A. Right.

22 Q. And did you work for both projects at the Newark  
23 BE&K facility?

24 A. Correct.

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1 Q. Did you ever have occasion to go off-site for  
2 those projects?

3 A. The second project, the DuPont project, I went to  
4 Corpus Christi, Texas.

5 Q. How many times?

6 A. As I recall, only once.

7 Q. Do you remember the length of time you had to go?

8 A. Three or four days at most.

9 Q. Okay. And did you complete project number 2?

10 A. Correct.

11 Q. And then what happened after you completed it?

12 A. Well, pretty much that was about the time, after  
13 the week of completion, that then they lay me off.

14 Q. About one week, you said?

15 A. Around, you know.

16 Q. Less than a month?

17 A. Yes.

18 Q. And probably you think less than two weeks?

19 A. I don't recall.

20 Q. Fair enough. So you finished project number 2  
21 and then less than a month after that you were laid off;

22 is that correct?

23 A. That's correct.

24 Q. Did you have any intermediate work between the



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1 Q. Did Walt Frazer given you any explanation as to  
2 why you were being laid off?

3 A. Well, typical explanation of lack of work.

4 Q. You said typical?

5 A. Typical, you know. I'm saying typical because  
6 engineering companies, when you are laid off, that's what  
7 you get as an answer.

8 And again, I, like I do all the time, if, to  
9 reinforce to myself that has not been my performance, I  
10 ask him, and he said no, that's not the issue.

11 Q. You were rehired later?

12 A. That's correct.

13 Q. So it would make sense that your performance was  
14 accurate or adequate?

15 A. Yes.

16 Q. Now, do you think that Walt Frazer had an age  
17 bias, some kind of discrimination against you?

18 A. I couldn't tell. I couldn't tell personally.

19 I'm going to add a little bit more. When  
20 we, the group of us, were laid off, again, the days that  
21 we were packing to go there were a group of very young  
22 engineers coming in with their boxes.

23 Q. This is in 1993?

24 A. '93.

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